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AUG 26 2008

OFFICE OF PETITIONS

In re Application of :
Dobbs, et al. :
Application No. 10/777,917 :
Filed: February 11, 2004 :
Attorney Docket No. 200209626-1 :

ON PETITION

This is a decision on the petition under 37 C.F.R. 1.181, filed July 10, 2008, to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to non-final Office action, mailed on September 10, 2007, which set forth an extendable 3 month period to reply. No extensions of time being obtained pursuant to 37 C.F.R. 1.136(a), the Office contended this application became abandoned on December 11, 2007 for failure to reply to the September 10, 2007 non-final Office action. A Notice of Abandonment was mailed on May 2, 2008.

Petitioners assert that an amendment and a petition for a two month extension of time along with authorization to charge the appropriate fee to petitioners' deposit account were mailed to the Office on February 11, 2008. The original response is not of record in the file and cannot be located. However, the copy of the amendment and the copy of the petition for extension of time submitted with the instant petition contain proper certificates of mailing bearing a February 11, 2008 date of deposit. It is noted that February 10, 2008, the due date for the reply, was a Sunday. Thus, any reply filed on February 11, 2008 with a two month extension of time would be timely filed.

Under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly

addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The amendment and the petition for extension of time bear proper certificates of mailing, dated February 11, 2008, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. In addition, the person signing the certificates, Attorney Paul F. Rusyn, had reasonable basis to expect that the correspondence would be mailed on February 11, 2008.

The petition is **GRANTED**, the holding of abandonment is withdrawn and the May 2, 2008 Notice of Abandonment is **vacated**.

Deposit account no. 08-2025 will be charged a two month extension of time fee. The mail room date on the payment will be February 11, 2008, which is the certificate of mailing date listed on the petition for extension of time.

The application file will be returned to Technology Center AU 2115 for consideration of the amendment filed on certificate of mailing date February 11, 2008 and re-submitted with the present petition on July 10, 2008.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.



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Office of Petitions